

EXHIBIT 22

Newark, DE

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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IN RE: PHARMACEUTICAL INDUSTRY) MDL No. 1456
AVERAGE WHOLESALE PRICE) Civil Action No.
LITIGATION) 01-12257-PBS

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THIS DOCUMENT RELATES TO:) Hon. Patti B.
United States of America ex rel.) Saris
Ven-A-Care of the Florida Keys,)
Inc. v. Dey, Inc., et al., Civil)
Action No. 05-11084-PBS; and)
United States of America ex rel.)
Ven-A-Care of the Florida Keys,)
Inc. v. Boehringer Ingelheim)
Corp., et al., Civil Action No.)
07-10248-PBS)

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Videotaped deposition of
THE DELAWARE DIVISION OF MEDICAID AND MEDICAL
ASSISTANCE by CYNTHIA DENEMARK
December 9, 2008 - Newark, Delaware

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<p>1 14 percent or AWP minus 16 percent?</p> <p>2 A. Yes, I was.</p> <p>3 Q. What was your involvement in that</p> <p>4 change?</p> <p>5 A. I worked with DMAA to find a vendor who</p> <p>6 was Heritage. EDS provided a subcontract via our</p> <p>7 overall contract with DHSS to have an audit done</p> <p>8 to find out what the relative cost of AWP to</p> <p>9 actual acquisition cost was at the time.</p> <p>10 Q. And I'm sorry, you worked with -- there</p> <p>11 was a -- you worked with an auditor to conduct</p> <p>12 that study; is that correct?</p> <p>13 A. I didn't say an auditor. There was a</p> <p>14 company, Heritage.</p> <p>15 Q. Heritage.</p> <p>16 A. And they supplied a team of people to</p> <p>17 help us do the audit for -- on the Delaware</p> <p>18 pharmacies.</p> <p>19 Q. And you were involved in working on</p> <p>20 that audit?</p> <p>21 A. I was.</p> <p>22 Q. And what was -- what were the findings</p>	<p>1 MS. WOOLFOLK: If there were privilege</p> <p>2 issues, no.</p> <p>3 MS. RAMSEY: Well, you can assert that</p> <p>4 on a question-by-question basis, correct?</p> <p>5 MS. WOOLFOLK: I can do that, yes.</p> <p>6 MS. RAMSEY: Thank you.</p> <p>7 BY MR. CYR:</p> <p>8 Q. So as best you can recall, what were</p> <p>9 the findings of that audit?</p> <p>10 A. That 30 pharmacies were surveyed for a</p> <p>11 period of time between November of 2000 and</p> <p>12 November of 2001. That traditional pharmacies</p> <p>13 purchased their brand products at AWP minus 19.04</p> <p>14 percent. That in general their purchase of</p> <p>15 multisource products was at AWP minus 56.29</p> <p>16 percent. That products that did not have a state</p> <p>17 MAC could actually be purchased at AWP minus</p> <p>18 63.93 percent.</p> <p>19 Q. Okay.</p> <p>20 A. Nontraditional pharmacies could</p> <p>21 purchase brand products at AWP minus 24.32</p> <p>22 percent. Generic products with a MAC at AWP</p>
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<p>1 of that audit?</p> <p>2 MS. WOOLFOLK: We have a pending</p> <p>3 document request as you know. We'll be providing</p> <p>4 some of those documents. Ms. Denmark hasn't</p> <p>5 reviewed that or didn't bring that with her</p> <p>6 today.</p> <p>7 THE WITNESS: I did review it and I</p> <p>8 have some of the findings, but there were lots of</p> <p>9 findings in that document. I don't have them all</p> <p>10 memorized.</p> <p>11 MS. WOOLFOLK: I'd ask that you -- that</p> <p>12 you would take a look at the study when we</p> <p>13 produce it pursuant to the Request for</p> <p>14 Production.</p> <p>15 We have not had the opportunity yet as</p> <p>16 you know to review those documents for privilege</p> <p>17 issues and I don't know if there's one associated</p> <p>18 with that study or not.</p> <p>19 MS. RAMSEY: To the extent that she</p> <p>20 knows the answers to the questions today she</p> <p>21 should be able to provide testimony though,</p> <p>22 correct?</p>	<p>1 minus 63.2 percent. Generic products without a</p> <p>2 MAC at AWP minus 70.51 percent. That in total,</p> <p>3 if you combine the traditional and nontraditional</p> <p>4 pharmacies, then the AWP minus 21.81 percent</p> <p>5 would represent the brand products. AWP minus</p> <p>6 55.99 percent were products with a MAC. AWP</p> <p>7 minus 67.44 percent without a MAC.</p> <p>8 MS. HEALY SMITH: Can I just stop you?</p> <p>9 Counsel, do you have a copy of what the witness</p> <p>10 is consulting?</p> <p>11 MS. RAMSEY: Yes.</p> <p>12 MR. CYR: Yes.</p> <p>13 MS. HEALY SMITH: I do not.</p> <p>14 MS. RAMSEY: Counsel, this is the</p> <p>15 document that the witness brought with her today.</p> <p>16 MS. HEALY SMITH: Right, and did you</p> <p>17 make copies for other people?</p> <p>18 MS. RAMSEY: We made them to enter as</p> <p>19 an exhibit which we'll do in a moment.</p> <p>20 MS. HEALY SMITH: Okay.</p> <p>21 MS. RAMSEY: Do you have any objection?</p> <p>22 MS. HEALY SMITH: No, I just saw</p>

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<p>1 everyone looking at it and thought, Wouldn't it 2 be nice if I had one, too. That's all.</p> <p>3 MS. RAMSEY: Well, we just in the 4 moment learned that what we have is what she's 5 talking about, so as soon as we get our documents 6 together, we'll enter it as an exhibit, if that's 7 satisfactory.</p> <p>8 THE WITNESS: I can't read my own 9 writing. I have one more comment on here but I'm 10 not sure what it says so --</p> <p>11 BY MR. CYR:</p> <p>12 Q. But the --</p> <p>13 A. I know what it says. Okay. So at the 14 time of the study -- oh, this is the OIG notes. 15 This is not the AAC study so it's a different 16 subject.</p> <p>17 MR. CYR: Mark this as Exhibit Dey 607. 18 (Exhibit Dey 607 was marked for 19 identification.)</p> <p>20 BY MR. CYR:</p> <p>21 Q. The court reporter has just handed you 22 Dey 607. Is that a copy of the note that you</p>	<p>1 drugs at discounts or purchase generic drugs at 2 discounts off of -- generic drugs without a MAC 3 at discounts off AWP averaging 67.44 percent; is 4 that correct?</p> <p>5 A. That's correct.</p> <p>6 Q. But under the reimbursement formula 7 that Medicaid implemented, those drugs would be 8 reimbursed at AWP minus 14 percent; is that 9 correct?</p> <p>10 A. At the time of conversion that would be 11 correct, if there was no FUL.</p> <p>12 Q. If there was no FUL and if there was no 13 MAC, then the generic drugs would be reimbursed 14 at AWP minus 14 percent, if it was a traditional 15 pharmacy?</p> <p>16 A. Yes.</p> <p>17 Q. Did you consider at the time 18 reimbursing for generic drugs at a larger 19 discount off of AWP?</p> <p>20 A. I don't believe there was any 21 consideration of using AWP at the NDC level for 22 establishing a generic pricing.</p>
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<p>1 were just looking at?</p> <p>2 A. Yes.</p> <p>3 Q. And you had said there's also a comment 4 on this note about an OIG report.</p> <p>5 Is that the -- the that's the 6 handwriting -- there's a -- there are three 7 columns with numbers. Is that the handwriting 8 below the three columns with numbers, is that the 9 comment?</p> <p>10 A. Yes.</p> <p>11 Q. But the things above that, those refer 12 to the audit that was performed, that DMAA had 13 performed; is that correct?</p> <p>14 A. Correct.</p> <p>15 Q. And this audit was performed in -- was 16 this -- this audit was considered when DMAA made 17 the switch from AWP minus 12.9 percent to AWP 18 minus 14 percent and AWP minus 16 percent; is 19 that correct?</p> <p>20 A. Yes.</p> <p>21 Q. So you -- the DMAA had conducted an 22 audit that found that providers could purchase</p>	<p>1 Q. What do you mean by that?</p> <p>2 A. If I understood your last question 3 correctly, you wanted to know if DMAA considered 4 using AWP and a larger percent.</p> <p>5 Q. Right.</p> <p>6 A. So I'm assuming that you meant that it 7 would be based on the AWP associated with an NDC.</p> <p>8 Q. That's correct.</p> <p>9 A. So no, we did not.</p> <p>10 Q. So there wouldn't be any -- there was 11 never a consideration that you would use one AWP 12 minus percentage for -- for reimbursement for 13 brand name drugs and a separate AWP minus 14 percentage for reimbursing for generic drugs?</p> <p>15 A. That was not a consideration.</p> <p>16 Q. Why wasn't that a consideration?</p> <p>17 MS. HEALY SMITH: Objection.</p> <p>18 THE WITNESS: Because the AWP's varied 19 widely between the NDCs within a product.</p> <p>20 BY MR. CYR:</p> <p>21 Q. So there was a concern that if the 22 discount for a generic drug, the discount off of</p>

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<p>1 AWP for a generic drug was too large, some of the</p> <p>2 -- some of the pharmacists would be reimbursed at</p> <p>3 an amount below their actual cost, their cost to</p> <p>4 acquire the drug; is that correct?</p> <p>5 A. That is not correct.</p> <p>6 MS. HEALY SMITH: Objection.</p> <p>7 BY MR. CYR:</p> <p>8 Q. Could you explain why that isn't</p> <p>9 correct.</p> <p>10 A. Yes. It's not correct because the</p> <p>11 program was concerned that if a pharmacy</p> <p>12 purchased a generic product simply based on the</p> <p>13 AWP of that NDC, that the manufacturer might</p> <p>14 inflate it, and so we wanted to bring into</p> <p>15 consideration what the overall product was and</p> <p>16 not reward smart purchasing by the providers.</p> <p>17 Q. So how was the AWP minus 14 percent and</p> <p>18 the AWP minus 16 percent, how were those decided?</p> <p>19 Why were those decided as the rates?</p> <p>20 A. The -- those were not actually the</p> <p>21 published rate for what the program was willing</p> <p>22 to pay the providers. At the time that the</p>	<p>1 benefit, so we don't have to offer it and -- to</p> <p>2 be a Medicaid program, but if we opt to provide</p> <p>3 that service, the clients must be able to within</p> <p>4 reason, and I don't know what the definition of</p> <p>5 reason, but they must be able to access those</p> <p>6 services.</p> <p>7 Q. Okay. And the concern with access, the</p> <p>8 concern that the providers were expressing to</p> <p>9 DMAA, and the reason that -- the reason that</p> <p>10 created a concern within DMAA about access was</p> <p>11 providers would drop out of the program and</p> <p>12 beneficiaries would not have access to</p> <p>13 prescription drugs?</p> <p>14 A. That's correct.</p> <p>15 Q. And do you know, is there -- is there -</p> <p>16 - strike that.</p> <p>17 And the provider's specific concern was</p> <p>18 that they would not receive adequate</p> <p>19 reimbursement under the proposed changes?</p> <p>20 MS. HEALY SMITH: Objection.</p> <p>21 THE WITNESS: I don't know what their</p> <p>22 perception might have been. I just know for fact</p>
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<p>1 published rates were available for comment,</p> <p>2 several of the large chains that supported the</p> <p>3 Medicaid program or provide services to the</p> <p>4 eligibles gave notice that they would terminate</p> <p>5 being Medicaid providers if our reimbursement was</p> <p>6 set at the proposed rate.</p> <p>7 I do not know what the proposed rate is</p> <p>8 off the top of my head. I didn't look at it</p> <p>9 because it became a moot point. We looked after</p> <p>10 the chains notified us that they were going to be</p> <p>11 nonparticipating whether we had an access issue.</p> <p>12 It was determined with the number of pharmacies</p> <p>13 that would be left to provide services that we</p> <p>14 would have an access issue, and so the secretary</p> <p>15 worked with the provider community leaders to</p> <p>16 establish a rate that would allow -- would permit</p> <p>17 them to continue being our providers.</p> <p>18 Q. You said before access issue. What do</p> <p>19 you mean by that?</p> <p>20 A. We are required as a Medicaid program</p> <p>21 that if we offer a benefit to our eligibles and</p> <p>22 by regulations the drug benefit is an optional</p>	<p>1 that they weren't going to be part of the</p> <p>2 program.</p> <p>3 BY MR. CYR:</p> <p>4 Q. And the reason they gave for</p> <p>5 withdrawing from the program was the proposed</p> <p>6 changes?</p> <p>7 A. Yes.</p> <p>8 Q. And so am I correct in assuming you</p> <p>9 don't remember the proposed changes but were they</p> <p>10 greater discounts off of AWP?</p> <p>11 A. Yes, they were.</p> <p>12 Q. And so you reduced the discounts off of</p> <p>13 AWP to meet the concerns of those providers?</p> <p>14 A. Yes.</p> <p>15 Q. And that was addressing the access</p> <p>16 issue?</p> <p>17 A. Yes.</p> <p>18 Q. Do you know is there a federal law or a</p> <p>19 federal rule concerning -- concerning -- strike</p> <p>20 that.</p> <p>21 Is there a federal statute or a</p> <p>22 regulation that requires DMAA to reimburse</p>

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<p>1 had a recollection of --</p> <p>2 Q. Okay. The ingredient portion of the</p> <p>3 reimbursement formula, that's intended to cover</p> <p>4 the cost of acquiring the drug; is that correct?</p> <p>5 MS. HEALY SMITH: Objection.</p> <p>6 THE WITNESS: My understanding of the</p> <p>7 definition of the ingredient cost is what does it</p> <p>8 cost the pharmacy to purchase the drug.</p> <p>9 BY MR. CYR:</p> <p>10 Q. Now, when you consider the adequacy of</p> <p>11 reimbursement to a provider, you need to consider</p> <p>12 both the dispensing fee and the ingredient</p> <p>13 portion and the ingredient cost portion; is that</p> <p>14 correct?</p> <p>15 A. Can you ask that question again?</p> <p>16 Q. If you want to evaluate the adequacy of</p> <p>17 a reimbursement to a Medicaid provider for</p> <p>18 dispensing a drug, you need to consider both the</p> <p>19 ingredient portion, the ingredient cost portion</p> <p>20 and the dispensing fee portion of the</p> <p>21 reimbursement payment; is that correct?</p> <p>22 MS. HEALY SMITH: Objection.</p>	<p>1 referring to the time that the 1994 study was</p> <p>2 done?</p> <p>3 BY MR. CYR:</p> <p>4 Q. That is correct.</p> <p>5 A. My recollection of 1994 was that</p> <p>6 Medicaid programs were answering to legislators</p> <p>7 as to why our dispensing fees were higher than</p> <p>8 other commercial payors.</p> <p>9 Q. So -- but that wasn't really my</p> <p>10 question.</p> <p>11 The question was whether dispensing</p> <p>12 fees were adequate to cover dispensing costs or</p> <p>13 whether there was knowledge among Medicaid</p> <p>14 providers whether dispensing fees were adequate,</p> <p>15 sufficient to cover dispensing costs?</p> <p>16 MS. HEALY SMITH: Objection.</p> <p>17 THE WITNESS: My recollection is that</p> <p>18 Medicaid officials realized that current</p> <p>19 dispensing fees of the time were not sufficient</p> <p>20 to cover the dispensing function, the cost</p> <p>21 associated with the dispensing function.</p> <p>22 BY MR. CYR:</p>
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<p>1 THE WITNESS: I'm not sure I would</p> <p>2 agree with how you phrased what the approach</p> <p>3 would be for consideration of a provider. I</p> <p>4 would look at the total fee that the provider is</p> <p>5 compensated.</p> <p>6 BY MR. CYR:</p> <p>7 Q. And what would the total fee include?</p> <p>8 A. The total fee would include the</p> <p>9 ingredient cost and the dispensing fee.</p> <p>10 Q. So if a dispensing fee was inadequate</p> <p>11 to cover a provider's cost of dispensing, those</p> <p>12 costs could be covered by the ingredient portion</p> <p>13 of the reimbursement payment; is that correct?</p> <p>14 MS. HEALY SMITH: Objection.</p> <p>15 THE WITNESS: Yes.</p> <p>16 BY MR. CYR:</p> <p>17 Q. Was there knowledge among state</p> <p>18 Medicaid officials at this time that dispensing</p> <p>19 fees paid by state Medicaid programs were not</p> <p>20 adequate to cover dispensing costs for drugs?</p> <p>21 MS. HEALY SMITH: Objection.</p> <p>22 THE WITNESS: And at this time you're</p>	<p>1 Q. Was that seen as a problem by Medicaid</p> <p>2 officials at the time?</p> <p>3 MS. HEALY SMITH: Objection.</p> <p>4 BY MR. CYR:</p> <p>5 Q. Strike that.</p> <p>6 Was that seen as a problem in terms of</p> <p>7 ensuring adequate participation in the Medicaid</p> <p>8 program by providers?</p> <p>9 MS. HEALY SMITH: Objection.</p> <p>10 THE WITNESS: No.</p> <p>11 BY MR. CYR:</p> <p>12 Q. And was that because the -- there was a</p> <p>13 margin in the ingredient portion cost of the</p> <p>14 reimbursement payment?</p> <p>15 A. Yes.</p> <p>16 Q. Have you ever heard of the term cross</p> <p>17 subsidization in connection with the ingredient</p> <p>18 portion as a way to make up for inadequate</p> <p>19 dispensing fees?</p> <p>20 A. I'm not sure that I've heard that</p> <p>21 specific term but I would agree that it probably</p> <p>22 applies to the situation.</p>

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<p>1 Q. Is that the concern that's being 2 expressed in this -- those two sentences in that 3 second paragraph under the Comments section? 4 MS. HEALY SMITH: Objection. 5 BY MR. CYR: 6 Q. You can answer the question. 7 A. Yes. 8 Q. So when the state Medicaid officials 9 you're talking about, when they state that 10 efforts to lower the reimbursement for 11 acquisition of drugs, the reimbursement payment 12 for acquisition of drugs should include some 13 review of the dispensing fee, they meant that a 14 study was needed to determine if the dispensing 15 fee needed to be raised to offset a reimbursement 16 in the ingredient portion; is that correct? 17 MS. HEALY SMITH: Objection. 18 THE WITNESS: That is the inference 19 that I get from reading the document, yes. 20 BY MR. CYR: 21 Q. Was that a view that you held at the 22 time?</p>	<p>1 into. 2 Q. Okay. Do you know if this list that's 3 included in this letter, is it from that list of 4 pharmacies that you provided to OIG? 5 A. It looks like it, yes. 6 Q. And the third page of this report, it 7 appears to be a form letter. 8 Do you recognize this letter? 9 A. I have to look at it. It's been a 10 while. 11 Q. Take your time. 12 A. Okay. Reacquainted myself with it, 13 yes. 14 Q. What is this letter? 15 A. This is a letter that went to the 16 pharmacy providers notifying them that they were 17 selected to participate in this OIG study, and 18 that they were required to provide the requested 19 documents. 20 Q. And what were the requested documents? 21 A. A copy of the largest invoice and then 22 it goes into great detail defining what the</p>
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<p>1 A. Yes. 2 (Ms. Purcell leaves the 3 deposition.) 4 MR. CYR: Dey 610. 5 (Exhibit Dey 610 was marked for 6 identification.) 7 BY MR. CYR: 8 Q. Do you recognize this document? 9 A. I do. 10 Q. What is this document? 11 A. I think this is the original finding or 12 the original selection of the pharmacy providers 13 that were going to be included in the 1996 audit, 14 so this was making sure that the State was aware 15 of who the OIG was going to contact. 16 Q. Did you provide this list of pharmacies 17 to the OIG? 18 A. I don't recall. 19 Q. Did -- 20 A. I believe I provided them with a full 21 list of the pharmacy providers in the program and 22 denoted what category of the five they would fall</p>	<p>1 largest invoice was. Copy of the billing 2 statement for that invoice. And the completed 3 form, whatever the form was. I guess it's on the 4 back here. Yes. 5 Q. And the things you're looking for in 6 this first two bullet points, those are -- that's 7 information concerning the prices the pharmacy 8 pays for drugs; is that correct? 9 A. Yes. 10 MR. CYR: Mark this as Dey 611, please. 11 (Exhibit Dey 611 was marked for 12 identification.) 13 BY MR. CYR: 14 Q. Do you recognize this document? 15 A. I don't recognize the document but I 16 did attend the meeting in 1995. 17 Q. That was -- that was at the Radisson 18 Hotel in Richmond, Virginia; is that correct? 19 A. Correct. 20 Q. Could you read the first paragraph 21 under Comments? 22 A. We presented the results of our AWP</p>

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<p>1 manufacturer could have multiple labeler codes.</p> <p>2 Q. Would you read the last paragraph of</p> <p>3 this letter. You don't have to read it out loud.</p> <p>4 MS. HEALY SMITH: On page one or the</p> <p>5 last paragraph of the letter?</p> <p>6 MR. CYR: The last paragraph of the</p> <p>7 letter.</p> <p>8 THE WITNESS: The letter?</p> <p>9 MR. CYR: The letter, yes. I'm sorry.</p> <p>10 Oh, no, I'm sorry, the last paragraph</p> <p>11 of page one.</p> <p>12 Thank you, Barbara.</p> <p>13 THE WITNESS: I've reacquainted myself</p> <p>14 with the paragraph.</p> <p>15 BY MR. CYR:</p> <p>16 Q. The second sentence that reads, As you</p> <p>17 noted, the ingredient cost -- the ingredient</p> <p>18 price is only one portion of pharmacy cost.</p> <p>19 Is there another -- is the other --</p> <p>20 strike that.</p> <p>21 In this paragraph, is Miss Nazario</p> <p>22 noting the importance of other aspects of</p>	<p>1 MS. HEALY SMITH: Objection.</p> <p>2 THE WITNESS: Yes.</p> <p>3 BY MR. CYR:</p> <p>4 Q. Just turning to the last page of the</p> <p>5 letter, there's a -- after Miss Nazario's</p> <p>6 signature, there are three names and the last</p> <p>7 name is yours; is that correct?</p> <p>8 A. That's correct.</p> <p>9 Q. Did you receive this letter?</p> <p>10 A. Probably.</p> <p>11 Q. Do you agree with the -- the statements</p> <p>12 in the fourth paragraph of this letter concerning</p> <p>13 AWP -- or strike that.</p> <p>14 At the time this letter was written,</p> <p>15 did you agree with the statements in the fourth</p> <p>16 paragraph of this letter concerning AWP?</p> <p>17 A. Yes.</p> <p>18 MR. CYR: Could you mark this as Dey</p> <p>19 613.</p> <p>20 (Exhibit Dey 613 was marked for</p> <p>21 identification.)</p> <p>22 BY MR. CYR:</p>
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<p>1 pharmacy reimbursement?</p> <p>2 MS. HEALY SMITH: Objection.</p> <p>3 THE WITNESS: She alludes that</p> <p>4 ingredient cost is not the full picture.</p> <p>5 BY MR. CYR:</p> <p>6 Q. And to make it a full picture as it</p> <p>7 were, would you have to include professional</p> <p>8 services and transaction costs?</p> <p>9 MS. HEALY SMITH: Objection.</p> <p>10 THE WITNESS: She doesn't specify</p> <p>11 transaction costs or any -- she does note a</p> <p>12 couple of things to consider, so I think she is</p> <p>13 reflecting that there is a service component that</p> <p>14 has to go along with the ingredient component.</p> <p>15 BY MR. CYR:</p> <p>16 Q. And is the concern that she's</p> <p>17 discussing, is that that even though the</p> <p>18 ingredient component of the reimbursement might</p> <p>19 be more than the provider's actual acquisition</p> <p>20 costs, the dispensing fee components of the</p> <p>21 reimbursement is less than the provider's</p> <p>22 dispensing costs?</p>	<p>1 Q. Do you recognize this document?</p> <p>2 A. I do.</p> <p>3 Q. Is this a document that OIG sent to you</p> <p>4 in 1996?</p> <p>5 A. I'm not sure if they sent it to me</p> <p>6 directly or if I received it via the division but</p> <p>7 I did receive a hard copy of it.</p> <p>8 Q. And did you receive it in 1996?</p> <p>9 A. Probably.</p> <p>10 Q. Okay.</p> <p>11 A. It's not recent that I had a hard copy</p> <p>12 of it.</p> <p>13 Q. Okay. And this report concerns</p> <p>14 Albuterol sulfate inhalation solution; is that</p> <p>15 correct?</p> <p>16 A. That's correct.</p> <p>17 Q. If you turn to the page marked Roman</p> <p>18 numeral -- little Roman numeral i.</p> <p>19 A. I'm there.</p> <p>20 Q. Could you read the last paragraph that</p> <p>21 starts on that page.</p> <p>22 A. The generic drug prices?</p>

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<p>1 Q. Yes. You don't have to read it out 2 loud. 3 A. Okay. 4 Okay. 5 Q. This paragraph states that Medicare 6 providers could purchase Albuterol at between 56 7 and 70 percent less than 43 cents per unit; is 8 that correct? 9 MS. HEALY SMITH: Objection. 10 THE WITNESS: That's what the report 11 says. 12 BY MR. CYR: 13 Q. Do you know what the -- what the 14 reimbursement formula for Medicare was at this 15 time, drugs dispensed to Medicare beneficiaries? 16 A. I do not. 17 Q. Do you know, was AWP used as a basis to 18 calculate reimbursement by Medicare at this time? 19 A. I can't testify to anything related to 20 Medicare. 21 MS. HEALY SMITH: Objection. 22 BY MR. CYR:</p>	<p>1 aware of this report in 1996? 2 MS. HEALY SMITH: Objection. 3 THE WITNESS: The Delaware Medicaid 4 program was. 5 BY MR. CYR: 6 Q. Delaware Medicaid program. 7 A. Yes. 8 More paper. 9 MR. CYR: I've got plenty more paper. 10 This is going to be Dey 614. 11 (Exhibit Dey 614 was marked for 12 identification.) 13 BY MR. CYR: 14 Q. Are you familiar with this report? 15 A. I am vaguely familiar with this report. 16 Q. Do you recall receiving this report? 17 A. Not specifically for 2002, no. 18 Q. Would DMAA have received a copy of this 19 report? 20 A. Yes. 21 Q. Could you turn to the eighth page of 22 the report.</p>
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<p>1 Q. The last sentence of that paragraph 2 reads that Therefore, the average wholesale price 3 used to determine Medicare's allowance for 4 Albuterol sulfate was significantly higher than 5 the wholesale price paid by thousands of buying 6 groups member pharmacies; is that correct? 7 Did I read that correctly? 8 A. That's what the report reads. 9 MS. HEALY SMITH: Objection. 10 BY MR. CYR: 11 Q. And the average wholesale price, is 12 that referring to AWP again? 13 MS. HEALY SMITH: Objection. 14 THE WITNESS: In the industry AWP 15 stands for average wholesale price. What this 16 report is actually referring to since there is no 17 true and 100 percent definition of what AWP is 18 specifically defined as, I'm not sure that you 19 could say that this average wholesale price 20 refers to the acronym AWP. 21 BY MR. CYR: 22 Q. So is it fair to say that Delaware was</p>	<p>1 A. The page number eight or the -- 2 Q. Page number eight, I'm sorry. 3 And once again, this is a report that 4 deals with the Albuterol sulfate inhalation 5 solution? 6 A. It is. 7 Q. If you look at the chart on page eight, 8 it shows the price that Medicare pays for -- the 9 unit price that Medicare pays for Albuterol on 10 the top left column? 11 A. Yes. 12 Q. And if you look down to supplier 13 invoices -- 14 A. Yes. 15 Q. -- it shows a price available to 16 suppliers; is that correct? 17 A. That's how the table is labeled. 18 Q. So in other words, this -- strike that. 19 This report shows a significant 20 difference between what Medicare reimburses 21 providers for Albuterol sulfate and what 22 suppliers can purchase Albuterol sulfate for; is</p>

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<p>1 that correct?</p> <p>2 MS. HEALY SMITH: Objection.</p> <p>3 THE WITNESS: This chart reflects what</p> <p>4 the author has defined as the purchase price of</p> <p>5 the Department of Veterans Administration. It</p> <p>6 reflects wholesale acquisition costs which if we</p> <p>7 go on the same assumption that average</p> <p>8 manufacture -- average wholesale price equals</p> <p>9 AWP, then wholesale acquisition cost in this</p> <p>10 table might reflect what's commonly referred to</p> <p>11 as WAC, and supplier invoices doesn't really</p> <p>12 define what a supplier is, so I'm not sure what</p> <p>13 exactly the authors are actually speaking to in</p> <p>14 the table.</p> <p>15 BY MR. CYR:</p> <p>16 Q. Assuming that the author is -- when the</p> <p>17 author uses the word supplier it's referring to a</p> <p>18 pharmacist or an entity that supplies drugs to</p> <p>19 Medicare beneficiaries. Would you agree that</p> <p>20 this table represents a significant spread</p> <p>21 between -- or a significant difference between</p> <p>22 the price that Medicare reimburses a supplier and</p>	<p>1 A. Yes.</p> <p>2 Q. Do you recall receiving it in 2002?</p> <p>3 A. Yes.</p> <p>4 Q. And this report concerns ipratropium</p> <p>5 bromide inhalation solution; is that correct?</p> <p>6 A. Correct.</p> <p>7 Q. Would you turn to page 11. This is a</p> <p>8 chart that's very similar to the chart we looked</p> <p>9 at in the last report, and going on the same</p> <p>10 assumptions we used when we looked at that chart</p> <p>11 in the last report, would this chart reflect a</p> <p>12 significant difference between the price Medicare</p> <p>13 reimburses a provider who dispenses the</p> <p>14 ipratropium bromide versus the supplier's actual</p> <p>15 acquisition costs for the drug?</p> <p>16 MS. HEALY SMITH: Okay.</p> <p>17 THE WITNESS: I would use a different</p> <p>18 adjective since the ratio between the difference</p> <p>19 is different, I wouldn't use the same one -- same</p> <p>20 adjective of significant to describe both tables,</p> <p>21 but there is a major difference.</p> <p>22 BY MR. CYR:</p>
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<p>1 the price that the supplier can purchase the</p> <p>2 drugs for?</p> <p>3 MS. HEALY SMITH: Objection.</p> <p>4 THE WITNESS: There's a significant</p> <p>5 difference between the listing on Medicare,</p> <p>6 median price per milligram, and the median price</p> <p>7 per milligram based on supplier invoice.</p> <p>8 BY MR. CYR:</p> <p>9 Q. Okay.</p> <p>10 MR. CYR: We're up to 615.</p> <p>11 (Exhibit Dey 615 was marked for</p> <p>12 identification.)</p> <p>13 BY MR. CYR:</p> <p>14 Q. Do you recognize this report?</p> <p>15 MS. HEALY SMITH: Did you say this is</p> <p>16 Exhibit 14 or 15?</p> <p>17 MR. CYR: 15.</p> <p>18 THE WITNESS: I'm vaguely familiar with</p> <p>19 this one, yes.</p> <p>20 BY MR. CYR:</p> <p>21 Q. Do you remember -- do you recall</p> <p>22 receiving this report?</p>	<p>1 Q. What adjective would you use?</p> <p>2 A. I like major. We'll go with major</p> <p>3 difference.</p> <p>4 Q. Major, okay.</p> <p>5 MR. CYR: 616. This will be Dey 616.</p> <p>6 (Exhibit Dey 616 was marked for</p> <p>7 identification.)</p> <p>8 BY MR. CYR:</p> <p>9 Q. Do you ever receive communications or</p> <p>10 letters from drug manufacturers?</p> <p>11 A. I do.</p> <p>12 Q. Do you have a procedure that you follow</p> <p>13 when you receive those letters?</p> <p>14 A. I do not have a written procedure, no.</p> <p>15 Q. Do you file -- do you have a practice</p> <p>16 of filing those letters?</p> <p>17 A. Not always.</p> <p>18 Q. Is there some criteria you use to</p> <p>19 determine which letters get filed and which</p> <p>20 letters don't?</p> <p>21 A. I usually scan over the information</p> <p>22 quickly to see if it has value or use, and if it</p>

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